# Supreme Court of the United States.

No. 104.—October Term, 1904.

Henry Dallemagne, Consul General of the Republic of France, Appellant,
*vs.*
Jean Francois Moisan.

Appeal from the District Court of the United States for the Northern District of California.

[March 13, 1905.]

This is an appeal on the part of the consul general of the Republic of France from the judgment of the District Court of the United States for the Northern District of California, discharging the defendant Moisan from imprisonment.

The proceeding arises on *habeas corpus*, to inquire into the validity of the detention of defendant in the city prison of San Francisco, in the State of California. His application for the writ was addressed to the District Court of theUnited States for the Northern District of California, and it showed that he was a citizen of France and was imprisoned by virtue of a requisition in writing, signed by the French consul general residing in San Francisco, and addressed to the chief of police of San Francisco, California, requiring his arrest as one of the crew of the French ship Jacques, then in that port, on account of his insubordinate conduct as one of such crew. (The requisition contained all the averments of facts which would warrant the arrest of the petitioner under the provisions of the treaty of 1853 between the United States and France.) The petitioner also averred that at the time of the making of his application for the writ the ship was not in the port of San Francisco, but had departed therefrom some time before. The petitioner was arrested by the chief of police, under such requisition, on the first day of May, 1903, and since that time had been confined in the city prison of San Francisco. He asserted that his imprisonment was illegal, because the facts set forth did not confer jurisdiction upon the consul or the chief of police, or either of them, to restrain complainant from his liberty, or to imprison him.

The petition was dated the 26th day of May, 1903, and the writ was issued, returnable before the District Court on the 28th day of May, 1903. The chief of police produced the body of the defendant, pursuant to the command of the writ, and justified the imprisonment, under the requisition referred to.

The District Court, after hearing counsel, made an order discharging the defendant from arrest, on the ground that it appeared to the court that

the bark Jacques, of the crew of which the defendant was a member, had departed from the port of San Francisco, and was no longer in that port. It was further ordered that the execution of the order should be stayed for the term of one day. Immediately thereon the consul general filed with the District Court his petition for appeal to the Supreme Court of the United States from the judgment discharging the defendant from imprisonment, which appeal was duly allowed, and thereupon the petitioner was admitted to bail by the District Court.

Mr. Justice PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the Court.

This case involves the construction of certain language in the eighth article of the consular convention between the United States and France, concluded on the 23d day of February, 1853, and proclaimed by the President of the United States on the 12th day of August, 1853, the whole convention being still in full force and effect. (10 Stat. 992, 996.) The article is reproduced in the margin.*

The first objection made by the defendant is to the validity of the requisition of the consul general, because it was directed to the chief of police of San Francisco, he being an officer of the State as distinguished from a Federal officer, the defendant contending that a Federal treaty cannot impose on a State officer, as such, a function violating the constitution of the State which he represents in his official character. It has long been held that power may be conferred upon a State officer, as such, to execute a duty imposed under an act of Congress, and the officer may execute the same, unless its execution is prohibited by the constitution or legislation of the State. (*Prigg* v. *Pennsylvania*, 16 Pet. 539, 622; *Robertson* v. *Baldwin*, 165 U. S. 275.) As to the objection that there was any statute or any constitutional provision of the State, prohibiting the execution

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* ARTICLE VIII. The respective consuls general, consuls, vice consuls, or consular agents, shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall alone take cognizance of differences which may arise, either at sea or in port, between the captain, officers, and crew, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not, on any pretext, interfere in these differences, but shall lend forcible aid to the consuls, when they may ask it, to arrest and imprison all persons composing the crew whom they may deem it necessary to confine. Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authority, and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the consuls. Their release shall be granted at the mere request of the consuls, made in writing. The expenses of the arrest and detention of those persons shall be paid by the consuls,

of the power conferred by the treaty upon the State officer, we think it unfounded. We find nothing in the constitution or in the statutes of California which forbids or would prevent the execution of the power by a State officer, in case he were willing to execute it. The provisions in the *constitution of the State, cited by counsel for defendant*, relate in substance only to the general proposition that no person should be deprived of his liberty without due process of law. The execution of a treaty between the United States and a foreign government, such as the one in question, would not violate any provision of the California constitution; the imprisonment is not pursuant to a conviction of crime but is simply a temporary detention of a sailor, whose contract of service is an exceptional one, (*Robertson* v. *Baldwin supra*,) for the purpose of securing his person during the time and under the circumstances provided for in the treaty, as concerning the internal order and discipline of the vessel. The murder on a foreign vessel, while in one of the ports of this country, of one of the crew of such vessel by another member of that crew has been held not to come within the terms of a somewhat similar treaty with Belgium, because the crime charged concerned more than the internal order or discipline of the foreign vessel. (*Wildenhus's case*, 120 U. S. 1.)

The chief of police voluntarily performed the request of the consul as contained in the written requisition, and the arrest was, therefore, not illegal so far as this ground is concerned.

There is another difficulty, however, and that is founded upon the provisions of the statutes of the United States. By the act of Congress, approved June 11, 1864, (13 Stat. 121,) entitled "An act to provide for the execution of treaties between the United States and foreign nations, respecting consular jurisdiction over the crews of vessels of such foreign nations in the waters and ports of the United States," full provision was made for the execution of such treaties. It was therein provided (section second) that application for the arrest might be made "to any court of record of the United States, or any judge thereof, or to any commissioner appointed under the laws of the United States." The act then provided for the issuing of a warrant for the arrest of the individual complained of, directed to the marshal of the United States, and requiring him to arrest the individual and bring him before the court or person issuing the warrant, for examination, and if, on such examination, it appeared that the matter complained of concerned only the internal order or discipline of the foreign ship, the court should then issue a warrant committing such person to prison, etc. It was further provided that no person should be detained more than two months after his arrest, but at the end of that time he should be allowed to depart and should not again be arrested for the same cause. The act was carried forward, in substance, into the Revised Statutes of the United States as sections 4079, 4080, 4081. (See also 2d Comp. Stat. page 2776.) This statute

having been passed by the United States for the purpose of executing the treaties it had entered into with foreign governments, must be regarded as the only means proper to be adopted for that purpose. Consequently, the requisition of the consul general should have been presented to the District Court or judge, &c., pursuant to the act of Congress, and the arrest should have been made by the marshal as therein provided for. Therefore the arrest of the seaman by the chief of police was unauthorized. When, however, the defendant was brought before the District Court of the United States upon the writ of *habeas corpus*, that court being mentioned in the statute as one of the authorities to issue warrants for the arrest of the individual complained of, and having power under the statute to examine into the question and to commit the person thus arrested to prison according to the provisions of the act, it would have been the duty of the court, under such circumstances, upon the production of the defendant under the writ, and upon the request of the consul, to have made an examination, and to have committed the defendant to prison if he were found to come under the terms of the treaty. It was, therefore, but a formal objection to the regularity of the arrest, which would have been obviated by the action of the court in examining into the case, and the defendant would not have been entitled to discharge merely because the person executing the warrant was not authorized so to do.

The important question remains as to the true construction of the eighth article of the treaty, with reference to the limitation of the imprisonment of the person coming within its terms. The District Court has held that the imprisonment must end with the departure of the vessel from the port at which the seaman was taken from the vessel. This we regard as an erroneous construction of the terms of the article.

The provisions of that article seem to us plain, and they refer to the imprisonment of the seaman and his detention during the time of his stay in port, and the language does not refer in that respect to the stay of the ship in port. The treaty provides that the local authorities shall lend forcible aid to the consuls when they may ask for the arrest and imprisonment of persons composing the crew, whom they may deem it necessary to confine. The language has no reference whatever to the ship, and they (the persons arrested) are held during their stay in the port "at the disposal of the consul." Surely the ship is not held at the disposal of the consul. It is the persons arrested who are held, and they are to be released at the mere request of the consul, made in writing, and the expenses of the arrest and detention of the persons arrested are to be paid by the consul. From the language of the treaty the departure of the ship from the port need have no effect whatever upon the imprisonment of the persons arrested. The statute (sec. 4801 of the Rev. Stat.) provides that the imprisonment shall in no case last longer than two months, and at the end of that time

the person arrested is to be set at liberty, and shall not again be arrested for the same cause. The statute makes no reference to the stay of the vessel in port, and the legislative construction of the treaty is that the imprisonment is not limited by the departure of the ship. Therefore the statute provides that such imprisonment shall not last, in any event, longer than two months. That term might end while the vessel was still in port. This construction not only carries out the plain language of the treaty, but, it seems to us, it is its reasonable interpretation. A vessel may arrive in port with a mutinous sailor, whose arrest is asked for under the treaty. When imprisoned pursuant to the terms of the treaty he ought not to be discharged without the request of the consul while within the limit of the term of imprisonment provided by the statute, simply because the vessel from which he was taken has left the port. If that were so the result would be either that the sailor would be discharged as soon as the ship left the port, or, in order to prevent such discharge, he would be taken on board the ship again, and probably be placed in irons. The ship might then continue a voyage which would not bring it back to France for months. During this time the sailor might be kept in irons and in close confinement on board ship, or else the discipline and safety of the ship might be placed in peril. By the other construction, although the ship had left the port without the mutinous sailor, he would not be entitled to his discharge from imprisonment within the two months provided for by the statute, and this would give an opportunity to the consul to send the sailor back to France at the earliest opportunity and at the expense of the French Government, by a vessel which was going directly to that country.

The District Court erred in discharging the defendant before the expiration of the two months provided for in the act of Congress, and against the protest of the French consul. Less than one of the two months of imprisonment permitted by the statute had expired when the defendant was discharged. The order discharging him must be reversed and the defendant remanded to imprisonment in a prison where prisoners under sentence of a court of the United States may be lawfully committed, (R. S., section 4081,) subject to the jurisdiction of the French consular authority of the port of San Francisco, but such imprisonment must not exceed, when taken with the former imprisonment of the defendant, the term of two months in the aggregate.

*Reversed, and remanded for further proceedings consistent with this opinion.*

Mr. Justice HARLAN dissented.